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ELIMINATION OF RACISM AND RACIAL DISCRIMINATION

MODEL NATIONAL LEGISLATION FOR THE GUIDANCE OF GOVERNMENTS IN THE ENACTMENT OF FURTHER LEGISLATION AGAINST RACIAL DISCRIMINATION

Draft revised by the Secretariat in accordance with the comments made by the Committee on the Elimination of Racial Discrimination at its fortieth and forty-first sessions

INTRODUCTION

1. Within the framework of the Programme of Action to Combat Racial Discrimination, the Secretary-General submitted to the General Assembly, at its thirty-ninth session, a Plan of Activities for the Second Decade, in which it was suggested that the General Assembly could consider inviting the Secretary-General "to prepare a model legislation, which could be used by States as a basis or as guidelines for the enactment or further development of legislation against racial discrimination". It was also suggested that "this matter could possibly be referred to the Committee on the Elimination of Racial Discrimination, which could be invited to report thereon to the General Assembly".

2. In its resolution 39/16 of 23 November 1984, the General Assembly invited the Secretary-General to proceed immediately with the implementation of the activities contained in that Plan of Activities. The General Assembly, the following year, in its resolution 40/22 of 29 November 1985, requested the Secretary-General to prepare and issue as soon as possible a collection of model legislation for the guidance of Governments in the enactment of further legislation against racial discrimination (paragraph 10). (See also resolutions 41/94 of 4 December 1986 (paragraph 9), 42/47 of 30 November 1987 (paragraph 8), 43/91 of 9 December (paragraph 8), 44/52 of 8 December 1989 (paragraph 10), 45/105 (paragraph 9) and 46/85 (paragraph 8).)

3. In its resolution 47/77 of 16 December 1992 (paragraph 9), the General Assembly requested the Secretary-General to revise and finalize the draft model

legislation for the guidance of Governments in the enactment of further legislation against racial discrimination, in the light of comments made by members of the Committee on the Elimination of Racial Discrimination at its fortieth and forty-first sessions and to publish and distribute the text as soon as possible.

4. This document contains the final draft of the model legislation for the guidance of Governments in the enactment of further legislation against racial discrimination.

Methodology

5. In preparing the "model legislation", the Secretary-General, in the light of national and international instruments and documents, analysed the provisions against racial discrimination adopted in the following countries: Algeria, Australia, Austria, Brazil, Bulgaria, Canada, China, Colombia, Cuba, Cyprus, the former Czech and Slovak Federal Republic, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Ghana, Guatemala, Hungary, India, Islamic Republic of Iran, Mexico, Morocco, Namibia, Netherlands, New Zealand, Nicaragua, Nigeria, Pakistan, Panama, Philippines, Portugal, Senegal, Spain, Sweden, Trinidad and Tobago, Turkey, the former Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America.

6. To analyse the provisions contained in the legislation of the above-mentioned countries, the thematic approach used by the Secretary-General in the "Overview of the texts submitted for the global compilation" (A/43/637, paragraphs 1-45) consisted first of identifying the following elements:

(a) Equality and non-discrimination in the enjoyment of human rights;

(b) Institutions with the specific aim of promoting racial tolerance and harmony;

(c) Recourse procedures;

(d) Remedies;

(e) Penalties.

At a second stage, those national provisions were synthesized to take into consideration the obligations of States under positive international law, together with the request contained in the Programme for States to enact provisions against racial discrimination, as follows:

(a) Provisions of principle;

(b) Preventive provisions;

(c) Repressive provisions.

7. In drafting the model legislation, the Secretariat, guided by positive international law, took account of both repressive and preventive action taken

by States in combating racial discrimination. The relativity of this terminology to particular States, however, made it problematic to present prevention and repression as separate chapters in the model legislation (for instance, defining an offence automatically has a preventive function; on the other hand, a national institution established for the promotion of racial tolerance and harmony may play a quasi-repressive role when dealing with individual communications).

8. The principal objective of the model legislation being to ensure adequate protection for victims, the Secretariat pursued its mandate to facilitate access to that protection, according to the following outline:

(a) Part I - Definitions;

(b) Part II - General principles and measures which a law may comprise;

(c) Part III - Offences and penalties.

9. The text of the draft model law, revised by the Secretariat, taking into account the comments made by the Committee on the Elimination of Racial Discrimination, is as follows:

"MODEL LAW AGAINST RACIAL DISCRIMINATION

1. The purpose of this Act is to prohibit and bring to an end racial discrimination by any person, group of persons, public authorities, public and private national and local institutions and organizations in the civil, political, economic, social and cultural spheres, inter alia in employment, education, housing and the provision of goods, facilities and services.

PART I

Definitions

2. In this Act, racial discrimination shall mean any distinction, exclusion, restriction, preference or omission based on race, colour, descent, nationality or ethnic origin which has the purpose or effect of nullifying or impairing, directly or indirectly, the recognition, equal enjoyment or exercise of human rights and fundamental freedoms recognized in international law.

3. Racial discrimination shall not include special measures which have the purpose of ensuring adequate advancement of an individual or group of individuals of any particular race, colour, descent, nationality or ethnic origin, for the enjoyment or exercise of human rights and fundamental freedoms recognized in international law, provided that such measures do not result in the maintenance of separate rights for different racial groups and that they do not remain in force after the objectives for which they were taken have been achieved.

PART II

General principles and measures which a law may comprise

A. General principles

4. Racial discrimination as defined above is an offence under this Act.

5. All human beings are entitled to equal protection of the law against racial discrimination; this includes the right to an effective remedy against racial discrimination, as well as the right to seek just and adequate reparation or other satisfaction for any damage suffered as a result of such discrimination.

6. The State shall take measures to promote governmental, national and local policies and programmes against racial discrimination, including special measures as described in paragraph 2 of the section on definitions.

7. The State shall adopt measures to combat racial discrimination in the civil, political, economic, social and cultural spheres, particularly in employment, education, housing, the provision of goods, facilities and services, health and nutrition, and with regard to any administrative action by public officials and other servants of the State as defined in part III, section D.

B. Penalties and compensation

8. The offences described in part III, sections A, B, C, D, E, F and G, shall be subject to prosecution.

9. Victims of racial discrimination shall be entitled to just and adequate reparation or other satisfaction with regard to any harm suffered.

10. Offences shall be punished by:

(a) Imprisonment;

(b) Fines;

(c) Suspension of the right to be elected to a public office;

(d) Community service with a view to promoting good relations between different racial groups.

11. Reparation shall be made to victims of racial discrimination by means of restitution and/or compensation which may take the form of a payment for the harm or loss suffered, reimbursement of expenses incurred, provision of services or restoration of rights, as well as other measures taken within a specified period for the purpose of correcting or mitigating the adverse effects on the victims of any of the offences referred to in part III, sections A, B, C, D, E, F and G. Victims shall also be entitled to recourse to all other means of satisfaction, such as publication of the

judicial decision in an organ having wide circulation at the offender's expense or guarantee of the victim's right of reply by a similar means.

12. Victims shall be duly informed of their rights with regard to seeking reparation.

C. Recourse procedures

13. Individuals or groups of individuals shall be entitled to enter complaints alleging racial discrimination under this Act. Legal persons which came into existence prior to the commission of the offence and whose purpose is to combat racial discrimination shall also be entitled to enter complaints alleging racial discrimination under this Act, including complaints on behalf (or with the consent) of the victim or alleged victim.

14. Complaints regarding alleged acts of racial discrimination as defined in part III may be submitted to the appropriate judicial bodies or be entered in accordance with other domestic recourse procedures. The judicial bodies shall have automatic jurisdiction with respect to acts of racial discrimination which threaten the public order.

15. This Act shall not prejudice the right of an alleged victim of racial discrimination to apply to appropriate regional and international bodies, where necessary, subject to the conditions of admissibility under international law.

16. Offences under this Act shall be subject to the same statute of limitation provisions as are applicable to (other offences of the same nature).

D. Independent national authority against racial discrimination

17. An independent national commission against racial discrimination (hereinafter referred to as "the Commission") consisting of experts of high moral standing and acknowledged impartiality shall be established.

18. The members of the Commission shall be appointed in such a way as to ensure its independence and equitable racial and geographic representation in its composition.

19. The Commission shall have jurisdiction to consider any matter relating to racial discrimination and to take decisions thereon.

20. The Commission shall have the following functions:

(a) To study and review the implementation of this Act;

(b) To give advisory opinions to private and public bodies or assist them in any other way in the implementation of this Act or in connection with any other measure for the elimination of racial discrimination;

(c) To prepare (or assist in the preparation of) codes of conduct concerning the implementation of this Act in certain areas of activity

(such codes of conduct may become binding once they have been adopted by the competent legislative body);

(d) To propose to the competent legislative body any amendments to this Act or any other measures which would be necessary to combat racial discrimination;

(e) To provide information and education to promote and encourage good relations between different racial groups;

(f) To report annually on its activities (to the competent legislative authority);

(g) To receive complaints from alleged victims;

(h) To conduct inquiries either on behalf of a complainant or on its own behalf;

(i) To act as a mediator either on behalf of a complainant or on its own behalf;

(j) To bring legal actions either on behalf of a complainant or on its own behalf;

(k) To provide legal aid and assistance to alleged victims who have instituted court proceedings under this Act.

21. The Commission shall have jurisdiction over the entire country. It shall be represented at the local, intermediate and national levels in accordance with the domestic administrative organization of the enacting State (federal, confederate, centralized, decentralized ...) and have as much specialized knowledge and experience as possible in the various areas of activity.

PART III

Offences and penalties

A. Offence of racial discrimination committed in exercise of the freedom of opinion and expression

22. Under this Act and in accordance with international law, the freedom of opinion and expression and the freedom of peaceful assembly and association shall be subject to the following restrictions:

23. It shall be an offence to threaten, insult, ridicule or otherwise abuse a person or group of persons by words or behaviour which cause or may reasonably be interpreted as an attempt to cause racial discrimination or racial hatred, or to incite a person or group of persons to do so.

24. If an act described in this paragraph results in racial discrimination, any person who has instigated such an act or has threatened, insulted, ridiculed or otherwise abused a person or group of

persons by words or behaviour which may reasonably be interpreted as an attempt to cause racial discrimination or racial hatred shall be considered an accomplice of the person who has committed the resulting act of racial discrimination.

25. It is an offence to defame an individual or group of individuals on one of the racial grounds referred to in part I.

26. It is an offence to disseminate or cause to be disseminated, in a publication, broadcast, exhibition or by any other means of social communication, any material that expresses or implies ideas or theories with the objective of incitement to racial discrimination.

27. The actions referred to in paragraphs 23 to 25 of this Section are deemed to constitute an offence irrespective of whether they were committed in public or in private.

28. An action which occurs inside a private dwelling and is witnessed only by one or more persons present in that dwelling shall not constitute an offence.

B. Acts of violence and incitement to racial violence

29. It is an offence under this Act to commit any act of violence or to incite another person to commit any act of violence against an individual or group of individuals on racial grounds.

C. Racist organizations and activities

30. Any organization which undertakes to promote, incite, propagate or organize racial discrimination against an individual or group of individuals shall be declared illegal and prohibited.

31. It is an offence to organize any activity with the purpose or effect of promoting racial discrimination against an individual or group of individuals.

32. With regard to paragraph 30 of this section, any person who at the time of commission of the offence of racial discrimination held the position of director or executive officer or an equivalent position in the organization, or who was acting or purporting to act in any such capacity, is deemed guilty of an offence under this Act, irrespective of whether or not the organization is a body corporate.

33. Persons who have committed offences under paragraph 32 of this section shall be deemed guilty unless they can prove that the act of racial discrimination was committed without their knowledge or consent and that they acted with due diligence to take the steps available to them which might have prevented the act of racial discrimination.

34. It is an offence knowingly to participate in the activities of prohibited organizations referred to in paragraph 30 of this section.

35. It is an offence knowingly to assist or support, whether financially or by any other means, any person, group of persons or organization in the commission of an act of racial discrimination.

D. Offences committed by public officials or other servants of the State

36. It is an offence for any official or other servant of the State, or of a public establishment, national enterprise or a legal entity receiving financial assistance from the public authorities, to deny an individual or group of individuals access to a right, privilege or benefit on racial grounds.

E. Offences according to the field of activity

1. Racial discrimination in employment

37. It is an offence, on racial grounds:

(a) To refuse to employ or refrain from employing an individual or group of individuals for a vacant post for which the persons concerned are qualified;

(b) To refuse to offer or provide or refrain from offering or providing an individual or group of individuals the same terms of employment, conditions of work and opportunities for training and promotion as are made available to other individuals or groups of individuals in the same circumstances and with the same qualifications;

(c) To dismiss an individual in circumstances in which other individuals employed by that employer for identical work are not or would not be dismissed.

38. The provisions of this section apply also to individuals or groups of individuals whose employer supplies their labour under contract to another person or business.

2. Racial discrimination in education

39. It is an offence, on racial grounds:

(a) To deny or limit the access of an individual or group of individuals to education of any type and at any level;

(b) To permit an individual or group of individuals to receive education of an inferior quality;

(c) To provide separate education to an individual or group of persons;

(d) To establish or maintain separate educational systems or institutions for an individual or group of individuals.

3. Racial discrimination in housing

40. It is an offence, on racial grounds:

(a) To deny, or restrict, the opportunity for an individual or group of individuals to rent, lease, purchase, sell or otherwise acquire or dispose of ownership of, or access to property whether in the terms on which the property is offered; or in the treatment of individuals or groups of individuals who are seeking such property;

(b) To distinguish between occupants in respect of the management of property, whether in the manner in which occupants are afforded access to any benefits or facilities, or in the denial of access to such benefits or facilities or any deliberate omission in relation to them, or in the eviction or any other measures taken against the occupants in respect of conditions of access to such property.

4. Racial discrimination in the provision of goods, facilities and services

41. It is an offence to refuse to provide or deliberately refrain from providing goods, facilities or services to individuals or groups of individuals on racial grounds, or, for the same reasons, to fail to provide goods, facilities or services of the same quality or under the same terms to all individuals or groups of individuals.

42. The provisions of this section shall apply to facilities and services such as:

(a) Access to and use of any place which is open to members of the public or a section thereof;

(b) Accommodation in hotels, boarding houses or other similar establishments;

(c) Facilities such as banks and insurance companies and services such as loans, grants, credit or financing;

(d) Facilities and places for entertainment, recreation or refreshment;

(e) Medical care, legal services and all other professional services.

F. Other offences

43. Any act of racial discrimination defined in part I for which no specific penalty has been established in part III shall nevertheless be considered an offence under this Act.

G. Protection of victims and obstruction of justice

44. It is an offence to threaten a victim or alleged victim of racial discrimination or in any way to obstruct his or her efforts to obtain redress through proceedings brought under this Act in accordance with recourse procedures in force."